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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/862,864

05/22/2001

John Courtney

0673-1028

1085

23644

7590

12/21/2005

BARNES & THORNBURG, LLP

P.O. BOX 2786

CHICAGO, IL 60690-2786

EXAMINER

HSU, ALPUS

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/862,864	<b>Applicant(s)</b> COURTNEY ET AL.	
	<b>Examiner</b> Alpus H. Hsu	<b>Art Unit</b> 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's arguments with respect to claims 1, 2, 4-21 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 18, it is unclear as to what is intended to be the claim limitation by reciting "comprising a switching apparatus as claimed in Claim1" in lines 1-2 since it is unclear as to what elements within the switching apparatus of claim 1 should be included in the claim.

Similarly, regarding claim 19, it is also unclear as to what is intended to be the claim limitation by reciting "comprising a switching apparatus as claimed in Claim1" in line 8 since it is unclear as to what elements within the switching apparatus of claim 1 should be included in the claim.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 4, 5, 8-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art Figure 2 of the instant application in view of SMITH et al. in U.S. Patent No. 6,654,368 B1.

Based on the applicant's own admission as prior art, Figure 2 of the instant application discloses a switching apparatus for providing hitless protection switching in a synchronous transmission system, which is arranged to receive data signals on a main transmission path and at least one stand-by transmission path, each path carrying, in use, a substantially identical data signal, and to output data from a selected one of said transmission paths, each data signal being comprised of data frames, each data frame comprising at least one data element, the apparatus including a selector mechanism for selecting between transmission paths (page 11, line 14 to page 13, line 12) as claimed.

Prior art Figure 2 differs from the claims, in that, it does not disclose the feature of having each data element associated with an **identifier** that identifies to which data frame it belongs, wherein the apparatus being arranged to align the respective data signals received on the transmission paths by causing the selector mechanism to select between transmission paths by selecting between a respective data element from each path wherein the associated identifiers of the respective data elements indicate that the respective data elements belong to the same data frame, which is well known in the art and commonly used in protection switching arrangement to avoid differential delay between transmission paths.

SMITH et al., for example, from the similar field of endeavor, teaches the uses of frame identifiers (TAGS) that identifies to which data frame it belongs, wherein the apparatus being arranged to align the respective data signals received on the transmission paths by causing the selector mechanism to select between transmission paths by selecting between a respective data element from each path wherein the associated identifiers of the respective data elements indicate that the respective data elements belong to the same data frame (ABSTRACT, COL. 4, LINE 31 TO COL. 6, LINE 37, AND Figure 2), which can be easily adopted by one of ordinary skill in the art to implement into the system in the prior art Figure 2 of the instant application, to further improve the system efficiency.

6. Claims 6, 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art Figure 2 of the instant application in view of SMITH et al. in U.S. Patent No. 6,654,368 B1 as applied to claims 1 and 4 above, and further in view of RUSSELL et al. in U.S. Patent No. 6,917,630 B1.

Regarding claims 6, 7 and 22, the switching apparatus provided from the teaching of prior art Figure 2 of the instant application in view of SMITH et al. also fails to disclose the feature of having the signal elements comprise data container and the identifiers comprise virtual concatenation overhead bits, which are all well known and commonly used data frame formats.

RUSSELL et al., for example, teaches the uses of such signal elements comprising data container and the identifiers comprising virtual concatenation overhead bits, which can be easily adopted by one of ordinary skill in the art into the switching apparatus provided from the teaching of prior art Figure 2 of the instant application in view of SMITH et al. to provide the system with compatibility to operate under SDH or SONET environment.

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

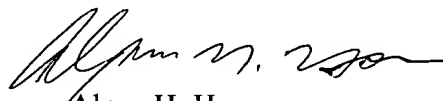
Peer, Suita and Sawey et al. '962 are further cited to show the common feature of conventional hitless protection switching system in SDH or SONET similar to the background of the invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH

  
Alpus H. Hsu  
Primary Examiner  
Art Unit 2665